



**THE DISTRICT COURTS RULES 1992, AMENDMENT NO. 3**

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CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 18th day of December 1995

Present:

THE RIGHT HON. J. B. BOLGER PRESIDING IN COUNCIL

PURSUANT to the District Courts Act 1947, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

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## RULES

**1. Title and commencement**—(1) These rules may be cited as the District Courts Rules 1992, Amendment No. 3, and shall be read together with and deemed part of the District Courts Rules 1992\* (hereinafter referred to as the principal rules).

(2) Except as provided in rules 2 (2), 3 (2), 4 (2), 5 (2), 6 (2), 7 (2), 19 (2), and 22 (2) of these rules, these rules shall come into force on the 1st day of February 1996.

**2. Margin**—(1) The principal rules are hereby amended by revoking rule 23, and substituting the following rule:

“23. (1) Subject to subclause (2), a margin of at least one-quarter of the width of the paper shall be left on the left-hand side of each page.

“(2) Where the reverse side of a page is used, a margin of at least one-quarter of the width of the paper shall be left on the right-hand side of that page.”

(2) This rule shall come into force on the 1st day of April 1996.

**3. Revocation of requirement that one side only be used**—(1) The principal rules are hereby amended by revoking rule 26.

(2) This rule shall come into force on the 1st day of April 1996.

**4. Revocation of provision for separate backing sheet**—(1) The principal rules are hereby amended by revoking rule 27.

(2) This rule shall come into force on the 1st day of April 1996.

**5. New rules substituted**—(1) The principal rules are hereby amended by revoking rules 28 and 29, and substituting the following rules:

“28. **Fastening and numbering of sheets**—Where there are more sheets than one,—

“(a) They shall be securely fastened together; and

“(b) Each page shall be numbered consecutively.

“29. **Description of document**—(1) Each document shall show on its first page, immediately below the heading, a description of the document adequate to show its precise nature.

“(2) The description shall include—

“(a) Words indicating the party by whom or on whose behalf the document is filed; and

“(b) The words ‘*ex parte* application’ in the case of an application so made.

**“29A. Format of first page—**(1) Subject to subclause (2), the first page of any originating document and of any notice of interlocutory application—

“(a) Shall include only—

“(i) The heading; and

“(ii) The description of the document; and

“(iii) The subscription; and

“(b) Shall leave ample space between the description of the document and the subscription for the inclusion of a minute.

“(2) The heading may, where necessary, be continued on the reverse side of the first page or on another sheet.”

(2) This rule shall come into force on the 1st day of April 1996.

**6. Heading on other documents—**(1) Rule 32 of the principal rules is hereby amended by omitting the words “, and the backing of all documents,”.

(2) This rule shall come into force on the 1st day of April 1996.

**7. Subscription at foot of first page—**(1) The principal rules are hereby amended by revoking rule 35, and substituting the following rule:

“35. (1) At the foot of the first page of every document for filing, there shall be subscribed—

“(a) The name of the solicitor or firm of solicitors (if any) presenting it for filing and the name of any agent by whom the document is filed; and

“(b) Where the document is presented for filing by or on behalf of a solicitor or firm of solicitors,—

“(i) The name and telephone number of the principal or employee dealing with the proceeding; and

“(ii) The address of any postal box or document exchange used by the solicitor or firm; and

“(iii) Any facsimile number used by the solicitor or firm.

“(2) The fact that the name of a solicitor or firm of solicitors is subscribed on a document shall be prima facie evidence that the document was filed by that solicitor or firm of solicitors.”

(2) This rule shall come into force on the 1st day of April 1996.

**8. Guardian ad litem to, or manager of, mentally disordered person—**Rule 94 of the principal rules is hereby amended by omitting the expression “Mental Health Act 1969”, and substituting the expression “Mental Health (Compulsory Assessment and Treatment) Act 1992”.

**9. Setting aside judgment—**The principal rules are hereby amended by revoking rule 165, and substituting the following rule:

“165. Any judgment given against a party who does not appear at the hearing of an application for judgment under rule 152 or rule 153 may be set aside or varied by the Court on such terms as it thinks fit if it appears to the Court that there has been or may have been a miscarriage of justice.”

**10. Proof of service—**Rule 218 of the principal rules is hereby amended by adding, as subclause (2), the following subclause:

“(2) Where the service of a document is proved by affidavit in form 14, it shall not be necessary, unless the Court otherwise directs, for a copy of the document to be annexed to the affidavit if—

- “(a) Either the original of the document or a copy of the document has, at the time of service, been filed in the office of the Court; and
- “(b) The affidavit contains a description of the document that—
- “(i) Is sufficient to enable the document to be identified; and
- “(ii) Includes the date of the document (if the document bears a date).”

**11. Compliance with notice**—Rule 316 (a) of the principal rules is hereby amended—

- (a) By omitting the expression “14 days”, and substituting the expression “28 days”; and
- (b) By omitting the expression “28 days”, and substituting the expression “42 days”.

**12. Order for general discovery**—Rule 319 of the principal rules is hereby amended by adding, as subclause (2), the following subclause:

“(2) Where a party who has filed and served a notice under rule 315, files—

- “(a) An affidavit of service in respect of the service of that notice on any other party who has filed a pleading; and
- “(b) An affidavit deposing that the party on which that notice was served has failed to comply with paragraph (a) or paragraph (b) of rule 316,—

that party may, without any application to the Court, issue as of course, as the case may require, an order under subclause (1) (a) or subclause (1) (b) of this rule, which order shall include a provision requiring the costs of the order to be paid by the party ordered to file and serve a list of documents and shall, for the purposes of rule 299, be deemed to be an order made on an interlocutory application.”

**13. Order for particular discovery before proceeding commenced**—Rule 321 of the principal rules is hereby amended by revoking subclause (2), and substituting the following subclause:

“(2) An application under subclause (1) shall be by interlocutory application made on notice—

- “(a) To the person from whom discovery is sought; and
- “(b) To the intended defendant.”

**14. New rules inserted**—The principal rules are hereby amended by inserting, after rule 355, the following rules:

“355A. **Interpretation**—In rules 355B to 355J, ‘interim payment’ means a payment on account of any damages, debt, or other sum (excluding costs) which the defendant in a proceeding may be held liable to pay to or for the benefit of the plaintiff in that proceeding.

“355B. **Application for interim payment**—(1) The plaintiff in a proceeding may, at any time after the statement of claim and notice of proceeding have been served on a defendant and the time for the filing of a statement of defence by that defendant has expired, apply to the Court for an order requiring that defendant to make an interim payment.

“(2) An application under this rule shall be supported by an affidavit which shall—

- “(a) Verify the amount of the damages, debt, or other sum to which the application relates and the grounds of the application; and
- “(b) Exhibit any documentary evidence relied on by the plaintiff in support of the application.

“(3) The application and a copy of the affidavit in support and any documents annexed thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the date fixed for the hearing of the application.

“(4) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown.

“355c. **Order for interim payment in respect of damages**—If, on the hearing of an application under rule 355b, the Court is satisfied—

“(a) That the defendant against whom the order is sought has admitted liability for the plaintiff’s damages; or

“(b) That the plaintiff has obtained, against the defendant against whom the order is sought, judgment for damages to be assessed; or

“(c) That, if the proceeding were tried, the plaintiff would obtain judgment for substantial damages against the defendant against whom the order is sought, or, where there are two or more defendants, against any of them—

the Court may, if it thinks fit, order that defendant to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.

“355d. **Order for interim payment in respect of sums other than damages**—If, on the hearing of an application under rule 355b, the Court is satisfied—

“(a) That the plaintiff has obtained an order for an account to be taken as between the plaintiff and the defendant and for any amount certified due on taking the account to be paid; or

“(b) That the plaintiff’s claim includes a claim for possession of land and, if the proceeding were tried, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant’s use and occupation of the land during the pendency of the proceeding, even if a final judgment or order were given or made in favour of the defendant; or

“(c) That, if the proceeding were tried, the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs,—

the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.

“355e. **Manner of payment**—(1) Subject to subclause (2), the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into Court, and where the amount is paid into Court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to the plaintiff at such time or times as the Court thinks fit.

“(2) Where any person who is or may be entitled to an interim payment pursuant to these rules or to any part of an interim payment, is—

“(a) A minor; or

“(b) A person who has a mental disorder within the meaning of section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

“(c) A person subject to a property order under the Protection of Personal and Property Rights Act 1988,—  
acceptance of the interim payment shall be subject to the approval of the Court and payment out of Court shall not be made without the leave of the Court.

“(3) An application under subclause (1) for money in Court to be paid out may be made *ex parte*, but the Court hearing the application may direct that notice of the application be served on the other party.

“(4) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

“(5) Where a payment is ordered in respect of the defendant’s use and occupation of land, the order may provide for periodical payments to be made during the pendency of the proceeding.

“355F. **Directions on application under rule 355B**—Where an application is made under rule 355B, the Court may give directions as to the further conduct of the proceeding as the Court thinks fit, and, in particular, the Court may order an early hearing of the proceeding.

“355G. **Non-disclosure of interim payment**—The fact that an order has been made under rule 355C or rule 355D shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the Court at the hearing of any question or issue as to liability or damages until all questions of liability and amount have been determined.

“355H. **Payment into Court in satisfaction**—Where, after making an interim payment, whether voluntarily or pursuant to an order, a defendant pays a sum of money into Court under rule 356, the notice of payment into Court must state that the defendant has taken into account the interim payment.

“355I. **Adjustment on final judgment or order or on discontinuance**—Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue the proceeding or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceeding on the application of any party, make such order with respect to the interim payment as may be just, and, in particular,—

“(a) An order for the repayment by the plaintiff of all or part of the interim payment; or

“(b) An order for the payment to be varied or discharged; or

“(c) An order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from that other defendant by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff’s claim.

“355J. **Counterclaims and other proceedings**—Rules 355A to 355I shall apply, with the necessary modifications, to any counterclaim or

proceeding where one party seeks an order for an interim payment to be made by another.”

**15. Interest**—The principal rules are hereby amended by revoking rule 372, and substituting the following rule:

“372. (1) A payment into Court in a proceeding in which the plaintiff has claimed interest shall be deemed to include interest, calculated to the date of the payment into Court, at the rate from time to time prescribed by or under section 62B of the District Courts Act 1947 unless the notice of payment specifically states that it does not include interest or that it includes interest at a rate other than that from time to time prescribed by or under section 62B of the District Courts Act 1947.

“(2) Where a payment into Court that does not include interest is accepted in satisfaction, the plaintiff may, within 7 days of filing the notice of acceptance, make application to have the question of interest determined by the Court.

“(3) For the purposes of determining whether, under rule 369, the plaintiff has recovered a greater sum than that paid into Court, any interest awarded shall be taken into account only where the payment into Court included interest.

“(4) Nothing in this rule affects the power of the Court to decline to award interest in any particular case.”

**16. Application of Part V to proceedings under certain Acts**—Rule 440 (1) of the principal rules is hereby amended by inserting, after paragraph (c), the following paragraph:

“(d) The Industrial and Provident Societies Act 1908.”

**17. Directions as to service**—Rule 444 of the principal rules is hereby amended by revoking subclause (3), and substituting the following subclause:

“(3) In the case of claims under the Family Protection Act 1955, the Law Reform (Testamentary Promises) Act 1949, or the Matrimonial Property Act 1963, the information required by subclause (2) shall include—

“(a) The date of death of the deceased and the date of grant of probate or letters of administration:

“(b) Whether the deceased died testate or intestate, and, if testate, a copy of his or her last will with codicils (if any):

“(c) The value of the estate, so far as it is known to the plaintiff:

“(d) The names, addresses, occupations, and ages of the beneficiaries under the will or persons entitled on intestacy, as the case may be:

“(e) The names, addresses, occupations, and ages of the persons of each class entitled to claim under the Family Protection Act 1955:

“(f) Any other information that is relevant.”

**18. Discontinuance of cause of action**—Rule 478 of the principal rules is hereby amended by adding, as subclause (2), the following subclause:

“(2) Notwithstanding subclause (1), a party in whose favour an interim payment has been ordered, in accordance with rule 355c, may not discontinue that party’s proceeding or counterclaim, or withdraw any particular claim therein, except with the leave of the Court or consent of all the other parties.”

**19. Exhibits to affidavits**—(1) The principal rules are hereby amended by revoking rule 509, and substituting the following rule:

“509. Exhibits to affidavits—

“(a) Shall be marked, in each case, with a distinguishing letter or number; and

“(b) Shall be annexed to the affidavit—

“(i) If this is practicable; and

“(ii) If none of them exceed International size A4; and

“(c) Shall, in each case, be identified by a note made thereon and signed by the person before whom the affidavit is sworn.

“(2) Exhibits that are not annexed to the affidavit shall, subject to subclause (3), be filed with the affidavit in a separate bundle, which bundle shall—

“(a) Be securely bound; and

“(b) Include a sheet bearing a proper heading, endorsement, and subscription.

“(3) Where the size, shape, or nature of an exhibit makes it impracticable to comply with subclause (1) (b) or subclause (2), that exhibit shall have firmly affixed to it a sheet bearing a proper heading, endorsement, and subscription.”

(2) This rule shall come into force on the 1st day of April 1996.

**20. Power of Judge to call conference and give directions**—The principal rules are hereby amended by inserting, after rule 546, the following rule:

“546A. (1) For the purpose of ensuring that any appeal or intended appeal may be determined in a convenient and expeditious manner, and that all matters in dispute may be effectively and completely determined, a Judge may at any time, either on the application of any party or intended party or without any such application, and on such terms as that Judge thinks fit, direct the holding of a conference of parties or intended parties or their counsel presided over by a Judge.

“(2) At any such conference the Judge presiding may—

“(a) Settle the issues to be determined:

“(b) Direct what persons shall be cited, or need not be cited, as respondents to the appeal, or direct that the name of any party be added or struck out:

“(c) Fix a time by which any affidavits or other documents shall be filed:

“(d) Fix a time and place for the hearing of the appeal:

“(e) Make an order in accordance with rule 556:

“(f) Give such other directions as may be necessary for the proper determination of the appeal.

“(3) Notwithstanding any of the foregoing provisions of this rule, a Judge may, at any time before the hearing of an appeal has been commenced, exercise any of the powers specified in subclause (2) without holding a conference under subclause (1).”

**21. Service of copies of notice of appeal on other parties**—Rule 551 of the principal rules is hereby amended by adding, as subclauses (2) and (3), the following subclauses:

“(2) Where the matter in which the decision was made involved the hearing of a charge against any person under any Act, the person or body by whom or by which that charge was prosecuted under that Act shall, for



the purposes of subclauses (1) and (3), be deemed to be a party to that matter.

“(3) Every party to the matter in which the decision was made who is served under subclause (1) with a copy of the notice of appeal shall, for the purposes of rule 558, be deemed to be a respondent to the appeal.”

**22. Consequential amendments to forms**—(1) The First Schedule to the principal rules is hereby consequentially amended by omitting from forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 the expression “(General heading—Form 1)” wherever it appears, and substituting in each case the expression “(General heading—Form 1 and endorsement)”.

(2) This rule shall come into force on the 1st day of April 1996.

MARIE SHROFF,  
Clerk of the Executive Council.

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#### EXPLANATORY NOTE

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules, which, except in the case of rules 2 to 7, 19, and 22, come into force on 1 February 1996, amend the District Courts Rules 1992.

Rules 2 to 7, which come into force on 1 April 1996, provide for the flat-filing Court documents.

Rule 8 amends rule 94 (which relates to guardian *ad litem* to, or manager of, mentally disordered person) by omitting a reference to the Mental Health Act 1969, and substituting a reference to the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Rule 9 revokes rule 165, and substitutes a new rule which provides that a summary judgment may be set aside or varied by the Court only if it appears to the Court that there has been or may have been a miscarriage of justice. The power to set aside summary judgments will now be in the same terms as the power in rule 473 to set aside or vary a judgment obtained by default.

Rule 10 adds a new subclause (2) to rule 218 (which relates to proof of service). The new subclause provides that where the service of a document is proved by affidavit, it shall not be necessary, unless the Court otherwise directs, for a copy of the document to be annexed to the affidavit if—

- (a) Either the original of the document or a copy of the document has, at the time of service, been filed in the office of the Court; and
- (b) The affidavit contains a description of the document that—
  - (i) Is sufficient to enable the document to be identified; and
  - (ii) Includes the date of the document (if the document bears a date).

Rule 11 amends rule 316 (a) (which relates to compliance with the notice for discovery). Currently under rule 316 (a) a party required by notice under rule 315 to give discovery must do so within 14 days after the date on which the notice is served (or within 28 days if the person is resident out of New Zealand). Those time periods are extended to 28 days and 42 days respectively.

Rule 12 adds a new subclause (2) to rule 319 (which relates to orders for general discovery). That subclause provides that an order for general discovery under rule 319 may be issued as of course against a party where an affidavit is filed deposing that that party has failed to comply with a notice for discovery served on that party under rule 315. The order shall include a provision requiring the costs of the order to be paid by the party ordered to file and serve a list of documents. The order shall, for the purposes of rule 299, be deemed to be an order made on an interlocutory application.

Rule 13 amends rule 321 (which gives the Court power to order discovery before a proceeding has commenced). The amendment requires notice of an application for such an order to be given not only to the person from whom discovery is sought but also to the intended defendant in the proceeding.

*Rule 14* inserts into the principal rules new rules 355A to 355J relating to interim payments.

The new rules provide that the Court, on the application of a plaintiff in a proceeding, may, if satisfied on certain specified grounds, order a defendant to make an interim payment to the plaintiff. An interim payment is a payment on account of any damages, or other sum (excluding costs) which the defendant in a proceeding may be held liable to pay to or for the benefit of the plaintiff in a proceeding.

The new rules are to the same effect as rules 346A to 346J of the High Court Rules.

*Rule 15* revokes rule 372, and substitutes a new rule. Subclause (1) of the new rule provides that a payment into Court in a proceeding in which the plaintiff has claimed interest shall be deemed to include interest, calculated to the date of the payment into Court, at the rate from time to time prescribed by or under section 62A of the District Courts Act 1947, unless the notice of payment specifically states that it does not include interest or that it includes interest at a different rate. New subclause (2) provides that where a payment into Court that does not include interest is accepted in satisfaction, the plaintiff may, within 7 days of filing the notice of acceptance, make application to have the question of interest determined by the Court.

Subclauses (3) and (4) are unchanged.

*Rule 16* amends rule 440 (1). The amendment inserts the Industrial and Provident Societies Act 1908 as an Act to which Part V of the rules applies.

*Rule 17* revokes subclause (3) of rule 444 (which relates to directions as to service), and substitutes a new subclause.

The new subclause—

- (a) Applies not only to claims under The Family Protection Act 1955 and claims under the Law Reform (Testamentary Promises) Act 1949, but also to claims under the Matrimonial Property Act 1963; and
- (b) Requires the plaintiff to furnish (in relation to all such claims and not just in relation to claims under the Family Protection Act 1955) the names, addresses, occupations, and ages of persons of each class entitled to claim under the Family Protection Act 1955.

*Rule 18* adds a new subclause (2) to rule 478 (which relates to discontinuance of cause of action). The new subclause (2) provides that notwithstanding subclause (1), a party in whose favour an interim payment has been ordered in accordance with new rule 355C may not discontinue that party's proceeding or counterclaim or withdraw any particular claim therein, except with the leave of the Court or the consent of all the other parties.

*Rule 19* revokes rule 509 (which relates to exhibits to affidavits), and substitutes a new rule. The new rule, which comes into force on 1 April 1996, is changed to take account of the new provisions relating to the flat-filing of Court documents.

*Rule 20* inserts a new rule 546A. The new rule provides that for the purpose of ensuring that any appeal or intended appeal is determined in a convenient and expeditious manner and that all matters in dispute may be effectively and completely determined, a Judge may at any time, either on the application of any party or intended party or without such application, and on such terms as the Judge thinks fit, direct the holding of a conference of parties or intended parties. The new rule sets out the powers of the Judge presiding at any such conference.

*Rule 21* amends rule 551 (which relates to the service of copies of a notice of appeal on other parties) by adding new subclauses (2) and (3). The new subclauses provide that where the matter in which the decision was made involved the hearing of a charge against any person under any Act, the person or body by whom or by which that charge was prosecuted under that Act shall be deemed to be a party to that matter. Every party to the matter in which the decision was made who is served with a notice of appeal under subclause (1) shall, for the purposes of rule 558, be deemed to be a respondent to the appeal.

*Rule 22*, which comes into force on 1 April 1996, makes a consequential amendment to various forms resulting from the changes relating to the flat-filing of Court documents.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 20 December 1995.

These rules are administered in the Ministry of Justice.